

**DRAFT
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Duwamish Shipyard, Inc.

AGREED ORDER

No. DE 6735

TO: POTENTIALLY LIABLE PERSON

Duwamish Shipyard, Inc.
P. O. Box 13368
Des Moines, WA 98198

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Duwamish Shipyard, Inc. (DSI) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Duwamish Shipyard, Inc. to perform an analysis of data gaps and complete a Remedial Investigation/Feasibility Study (RI/FS) for the Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order and their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. DSI agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter DSI's responsibilities under this Order. DSI shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW, Chapter 173-340 WAC, and Chapter 173-204 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the former Duwamish Shipyard and is generally located at 5658 West Marginal Way Southwest in Seattle, King County, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site.

Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington, Department of Ecology and Duwamish Shipyard, Inc.

C. Potentially Liable Person (PLP): Refers to Duwamish Shipyard, Inc.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the PLP:

A. The Site, which is defined by the extent of contamination caused by the release of hazardous substances, includes land impacted by industrial practices at the former Duwamish Shipyard. The Site is located approximately 4 miles south of downtown Seattle and the property address is 5658 West Marginal Way Southwest. Exhibit A shows the approximate Site boundaries and the upland, bank, and sediment areas of the Site. The Site is on the west bank of the Lower Duwamish Waterway (LDW). The PLP operated a shipyard at the Site from 1941 until 2007. The Site is paved and buildings on the Site have concrete floors. Buildings on the Site have included the main building, the Wood and Machine Shop, the Valve Shop, and the Machine Shop. Shipyard operations ceased in early 2007 and the remaining buildings on the Site are to be decommissioned.

B. The Site has been the subject of several environmental investigations and cleanups beginning in the early 1990s. These investigations and cleanups are summarized in the following report:

- *Lower Duwamish Waterway Glacier Bay Source Control Area Summary of Existing Information and Identification of Data Gaps*, dated June 2007 by Science Applications International Corporation (SAIC).

- *Preliminary Investigation Data Report*, Duwamish Shipyard, Inc. (Site #1429) dated December 2006 by Anchor Environmental, L.L.C. (Anchor).

More detailed information on individual investigations and cleanups are available in the references listed in the reports noted above.

C. Environmental investigations and cleanups revealed releases of total petroleum hydrocarbons (TPH), polynuclear aromatic hydrocarbons (PAHs), semi-volatile organic compounds (SVOCs), volatile organic compounds (VOCs), arsenic, cadmium, copper, lead, and zinc to soil; TPH, PAHs, VOCs, arsenic, chromium, and lead to groundwater; copper and zinc to storm water; PAHs, SVOCs, tributyltin, copper, mercury, and zinc to storm water sediments; PAHs, SVOCs, arsenic, copper, lead, and zinc to LDW sediments.

D. The U.S. Environmental Protection Agency (EPA) added the LDW to the federal Superfund list on September 13, 2001. EPA has entered into a Memorandum of Understanding with Ecology under which Ecology has been designated the Lead Agency to implement efforts to investigate and control sources of contamination to LDW sediments. Dioxins/furans, PCBs, PAHs, SVOCs, antimony, arsenic, copper, mercury, lead, tin, and zinc have been identified as contaminants of concern in sediments in the Glacier Bay Source Control Area, which includes the Site. The Glacier Bay Source Control Area has been identified as a Tier 2 site where long-term sediment cleanup actions might be necessary. Releases of PAHs, SVOCs, copper, mercury, and zinc have been identified to storm water sediment on the Site, and storm water from the Site discharged into LDW.

E. On November 9, 1988, the Site was identified as a confirmed hazardous waste site with confirmed soil and sediment contamination. Public Health – Seattle and King County conducted a Site Hazard Assessment of the Site in 2006 – 2007 and found confirmed releases of hazardous substances to soil, groundwater, and sediment, and suspected releases to surface water. On February 14, 2007, the Site was ranked “2” on the Washington State Hazardous Sites List as a result of the Site Hazard Assessment. This ranking is based on a scale of 1 to 5. According to this scale, “1” represents the highest relative risk and “5” represents the lowest

relative risk. This ranking is designed to estimate the potential threat to human health and/or the environment, relative to all other sites in Washington State.

F. On the basis of the facts set forth herein, Ecology has determined that a release or threatened release of hazardous substances on, at, or from the Site requires remedial actions to protect human health and the environment. This Order sets forth the measures that need to be taken to complete an RI/FS for the Site.

VI. ECOLOGY DETERMINATIONS

A. The PLP is an “owner or operator” as defined in RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5) because the PLP owned or operated facilities on property at which, and from which, hazardous substances were released into the environment during the PLP’s ownership or operations.

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a potentially liable person status letter to the PLP dated March 15, 2007, pursuant to RCW 70.105D.040, -.020(16), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that DSI is a PLP under RCW 70.105D.040 and notified the PLP of this determination by letter dated May 10, 2007. Without making an admission of liability, DSI waived its right to a 30-day notice and comment period to expedite further investigations at the DSI facility, including entering into an Agreed Order for an RI/FS.

D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLP’s to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, RI/FS or design of a cleanup action. Cleanup of contaminated sediment in the LDW might be delayed because of the potential for sediment recontamination as a result of releases from the Glacier Bay Source Control Area. Investigation of the Site may reveal sources of contamination to the LDW that if addressed promptly will reduce potential LDW sediment remediation delays. The need to reduce or eliminate sources of contamination to the LDW might warrant an interim action consistent with WAC 173-340-430. Ecology will determine if interim actions are warranted and will give direction to the PLP regarding the scope and schedule for such interim actions as this Order is implemented.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLP take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC and Chapter 173-204 WAC, unless otherwise specifically provided for herein:

A. Provide a detailed summary of historical and recent Site environmental data, identify data gaps, and complete a Remedial Investigation/Feasibility Study (RI/FS) of the Site in accordance with WAC 173-304-350 that addresses any such identified data gaps. The scope of work for the environmental data summary, data gaps identification, and RI/FS is more particularly described in Exhibit B, "Work Plan: Remedial Investigation and Feasibility Study." Exhibit B is incorporated by reference and is an integral and enforceable part of this Order.

B. The schedule of performance and list of deliverables is described in Exhibit C, "Schedule for Performance and Deliverables." The Schedule of Performance and Deliverables is incorporated by reference and is an integral and enforceable part of this Order.

C. Execution of the RI/FS work plan shall commence no later than 30 days following the date of signature of this Order by Ecology and shall be conducted according to the schedule presented in Exhibit C. Monthly progress reports shall be submitted to Ecology by the 15th of the month following the reporting month. The first report shall be due on the 15th of the month following the first full reporting month period, and shall include any portion of the month between project commencement and the beginning of the first full reporting month. The monthly report will list work plan activities for which data were collected during the previous month. Data packages for which quality assurance/quality control validation were completed during the previous month shall be submitted with the monthly report to Ecology as hard copy and on computer disk and shall be submitted in accordance with Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements). Two copies of the monthly report shall be submitted.

D. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

The PLP shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work

performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLP shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum compounded monthly.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that the PLP has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLP, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the PLP's failure to comply with its obligations under this Order, the PLP shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the PLP is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the PLP shall not perform any remedial actions at the Site outside those remedial action required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Mark H. Edens
Washington State Department of Ecology
Northwest Regional Office
Toxics Cleanup Program

3190 – 160th Avenue S.E.
Bellevue, WA 98008-5452
Telephone: 425-649-7070
Facsimile: 425-649-7098
E-Mail: mede461@ecy.wa.gov

The project coordinator for DSI is:

David Templeton
Anchor QEA, LLC
1423 Third Avenue, Suite 300
Seattle, WA 98101
Telephone: 206-287-9130
Facsimile: 206-287-9131
E-Mail: dtempleton@anchorqea.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLP, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a

professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The PLP shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the PLP either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLP's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLP. Ecology or any Ecology authorized representative shall have full authority to request access to, inspect and photocopy records, operation logs, and contracts relating to the work being performed pursuant to this Order, which are not kept on the DSI Property. The PLP shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLP where remedial actions or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLP unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLP shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLP shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLP pursuant to implementation of this Order. The PLP shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLP and/or its authorized representatives to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify the PLP prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the PLP.

Ecology shall maintain the responsibility for public participation at the Site. However, the PLP shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, RI/FS reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the PLP prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLP that do not receive prior Ecology approval, the PLP shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Seattle Public Library - South Park Branch
8604 Eighth Ave. S., at S. Cloverdale St.
Seattle, WA 98108
- b. Ecology's Northwest Regional Office
3190 - 160th Ave. SE
Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, and supplemental remedial planning documents; and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLP shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLP shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B. of this Order (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the PLP's shall have fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

i. The PLP's shall include in the written objection sufficient detail to allow Ecology to evaluate the merits of the dispute.

ii. Such detail shall include the specific Ecology determination or direction or itemized statement in dispute and shall include specific argument(s) documenting the basis for invoking the dispute resolution procedure.

iii. Clarification of Ecology directions or determinations shall not be handled through the dispute resolution procedure. Ecology's project coordinator shall make such clarifications in a manner and time he or she deems appropriate to expedite to the maximum extent practicable the work to be performed under this Order.

b. The Parties' project coordinators shall then confer in good faith in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, then Ecology's project coordinator shall issue a written decision.

c. The PLP's may then request regional management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) days after receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days after the PLPs' request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the PLP to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLP including delays caused by unrelated third parties or Ecology, such

as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLP;

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VIII.M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the PLP.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLP written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner;

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.M (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed described in Section VII (Work to be Performed) shall require formal amendment of this Order. This Order may only be formally amended by the written consent of

both Ecology and the PLP. The PLP shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the PLP to cease such activities for such period of time as it deems necessary to abate the danger. The PLP shall immediately comply with such direction.

In the event the PLP determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the PLP may cease such activities. The PLP shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the PLP shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLP to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), the PLP's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the PLP to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLP regarding remedial actions required by this Order, provided the PLP complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site. By entering into this Agreed Order, the PLP does not admit any liability for the Site. Although the PLP is committing to performing the work required by this Order, the PLP expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLP without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the PLP's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLP shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the PLP shall notify Ecology of said transfer. Upon transfer of any

interest, the PLP shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the PLP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLP is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the PLP shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

3. The PLP has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLP determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLP and on how the PLP must meet those requirements. Ecology shall inform the PLP in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP shall not

begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

4. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the PLP shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

The PLP agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the PLP's receipt of written notification from Ecology that the PLP has completed the remedial action required by this Order, as amended by any modifications, and that the PLP has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event the PLP refuses, without sufficient cause, to comply with any term of this Order, the PLP will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

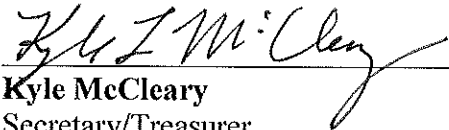
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

DUWAMISH SHIPYARD, INC.

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



Kyle McCleary
Secretary/Treasurer
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